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JUL 30 2015

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT

BY MAIL

SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		District <u>EASTERN DISTRICT OF MISSOURI</u>
Name (under which you were convicted): <u>Thebeau, John</u>		Docket or Case No.: <u>4:07-CR-41-DJS</u>
Place of Confinement: <u>MARIEN U.S.P. MARIEN, IL</u>		Prisoner No.: <u>33832-044</u>
UNITED STATES OF AMERICA		Movant (include name under which convicted) v. <u>Thebeau, John</u>

MOTION

- (a) Name and location of court which entered the judgment of conviction you are challenging: United States District Court, Eastern District of Missouri, 111 S. Tenth Street, ST. Louis, Missouri 63102
(b) Criminal docket or case number (if you know): 4:07-CR-41-DJS
- (a) Date of the judgment of conviction (if you know): _____
(b) Date of sentencing: _____
- Length of sentence: 216 months; 3 years supervised release.
- Nature of crime (all counts): Two counts of Fela in possession of a weapon in violation of 18 U.S.C. § 922 (g)(1)
- (a) What was your plea? (Check one)
(1) Not guilty ☐ (2) Guilty ☒ (3) Nolo contendere (no contest) ☐
(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or what did you plead guilty to and what did you plead not guilty to? N/A
- If you went to trial, what kind of trial did you have? (Check one)
Jury ☐ Judge only ☒

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☐ No ☒

8. Did you appeal from the judgment of conviction? Yes ☒ No ☐

9. If you did appeal, answer the following:

(a) Name of court: United States court of appeals for the Eighth Circuit.

(b) Docket or case number (if you know): N/A.

(c) Result: Denied.

(d) Date of result (if you know): MAY 16, 2008

(e) Citation to the case (if you know): N/A.

(f) Grounds raised: The district court erred in determining that a prior conviction was a crime of violence.

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☒ No ☐

If "Yes," answer the following:

(1) Docket or case number (if you know): N/A.

(2) Result: petition for writ of certiorari was denied.

(3) Date of result (if you know): OCT. 16, 2008

(4) Citation to the case (if you know): N/A.

(5) Grounds raised: Whether the eighth circuit court of appeals failure to recognize the district court's procedural errors of failing to adequately consider all of the § 3553 (a) factors and explain its sentencing decision conflicts with court's holding in Hall vs. United States, 128 S. Ct. 586, 596 (2008).

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes ☒ No ☐

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: United States District Court from the Eastern District of Missouri

(2) Docket or case number (if you know): 4:09 CV 1660 RWS

(3) Date of filing (if you know): N/A.

(4) Nature of the proceeding: § 2255

(5) Grounds raised: Seeking review of my status as an armed career criminal offender under § 4B1.2 with prior conviction of attempted burglary.

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐

No ☒

(7) Result: Denied

(8) Date of result (if you know): March 9, 2011

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: District Court for the Eighth Circuit

(2) Docket of case number (if you know): NAH12CV1032 RWS

(3) Date of filing (if you know): June 07, 2012

(4) Nature of the proceeding: Successive 28 U.S.C. § 2255

(5) Grounds raised: Ineffective assistance of counsel, challenges the (ACCA) enhancement in light of intervening change in law, challenges the sentence enhancement using the predicate offense of attempted burglary

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐

No ☒

(7) Result: Denied. The appeal is dismissed.

(8) Date of result (if you know): June 11, 2012

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☐

(2) Second petition: Yes ☐ No ☐

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

N/A.

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: New rule of Constitutional Law.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Thebeau's sentence was nearly doubled with the
(ACCA), using the "residual clause" on prior
convictions. that is now unconstitutional.
Based on Johnson v. United States, NO. 13-7120
June 26, 2015 United States Supreme Court.

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☒ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: N/A

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☒ No ☐

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: 28 U.S.C. § 2255

Name and location of the court where the motion or petition was filed: Eastern District
of Missouri.

Docket or case number (if you know): 4:09-cv-01660-12WS

Date of the court's decision: August 03 2011

Result (attach a copy of the court's opinion or order, if available): N/A.

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☒ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☒ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: United States Court of Appeals for the Eighth Circuit

Docket or case number (if you know): NO-11-1921

Date of the court's decision: August 03, 20

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

GROUND TWO: N/A

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

N/A

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: NA

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: NA

Name and location of the court where the motion or petition was filed: NA

Docket or case number (if you know): NA

Date of the court's decision: NA

Result (attach a copy of the court's opinion or order, if available): NA

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: NA

Docket or case number (if you know): NA

Date of the court's decision: NA

Result (attach a copy of the court's opinion or order, if available): NA

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: NA

GROUND THREE:

N/A

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

N/A

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

N/A

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

N/A

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐

No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND FOUR:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

N/A

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

N/A

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☐

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐

No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐

No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐

No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. N/A.

15. Give the name and address, if known, of each attorney who represented you in the following stages of the you are challenging:

(a) At the preliminary hearing: Lucille G. Liggett - Public Defender
1010 Market St., Suite 200, St. Louis, Mo. 63101

(b) At the arraignment and plea: Same as Above.

(c) At the trial: Same as Above

(d) At sentencing:

Same as Above.

(e) On appeal: Same as Above.

(f) In any post-conviction proceeding: NO - PRO SE.

(g) On appeal from any ruling against you in a post-conviction proceeding: N/A

16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

- (b) Give the date the other sentence was imposed: N/A
- (c) Give the length of the other sentence: N/A
- (d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☒

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

New Rule of Constitutional Law From
Supreme Court Ruling on June 26, 2015
Johnson v United States No. 13-7120

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of –

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has

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been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief: 28 U.S.C. § 2255 to VACATE,
SET ASIDE, or correct sentence and memorandum in support
of motion. 28 U.S.C. § 2255(h)(2)
or any other relief to which movant may be entitled.

in-pro-se -
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system, first class postage prepaid on July 29th, 2015 (month, date, year).

Executed (signed) on _____ (date)

John E. Schull
Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

